

August 5, 2022

Letter of Appeal filed electronically ECFS
Marlene H. Dortch
Secretary
Federal Communications Commission, Docket No. 02-6
445 12th Street, SW
Washington, DC 20554

Re: Appeal of NETXV; FY2019; BEN 221711

Dear Appeals Reviewer:

Pursuant to 47 C.F.R. § 54.719(a), NETXV (Education Service Center Region 15 also known as NETXV) hereby respectfully submits this appeal of decisions by the Universal Service Administrative Company (USAC) to recover funds from NETXV's application for funding year 2019:

FCC Form 471	FRN	Commitment adjustment	Total amount to be recovered	Explanation	Party to recover from
191035521	1999066500	0.00	\$10,553.64	Service Provider invoiced USAC in excess of the amount billed and services provided to the applicant; Failure to Pay the Non-discounted portion (Assuming the applicant was billed for the Non-discounted portion) (Applicant did not pay anything)	BEN AND SPIN

USAC's Reason for Recovery of Funding

During a PQA review, CASE ID: SL-2020-01-CASE-009¹, it was determined that funds were improperly disbursed for this funding request. Funds were disbursed in excess of the cost of products and/or services actually delivered to the applicant. Specifically, the service provider invoiced USAC in excess of the amount billed and services provided to the applicant. Conterra Ultra Broadband LLC did not remove the cost of ineligible goods and/or services before

¹ CASE ID: SL-2020-01-CASE-009 Close Letter with Exceptions from USAC dated September 9, 2021

invoicing USAC. Based on the review, NETXV service provider bills did not support the undiscounted amount of the disbursement under review. FCC rules authorize USAC to disburse funds to service providers for providing supported services to eligible entities. These rules are violated if the service provider invoices USAC and receives payment for services and/or products in excess of what it delivered to the eligible entity. Since the services were invoiced via a SPI, this violation was caused by an act or omission of the service provider because the service provider is responsible for ensuring that it only receives support for services and/or products that it actually provides to its customers. Accordingly, USAC will seek recovery of \$6,675.75 in improperly disbursed funds from the service provider. Additionally, it was determined that funds were improperly disbursed for this funding request. The applicant did not pay any of the non-discounted share of the products and services purchased with the Universal Service discounts. The entire non-discounted share is \$125,244.75 and the applicant paid only \$121,366.86. FCC rules require applicants to pay the entire non-discounted share of the products or services purchased with Universal Service discounts. Applicants that do not pay the non-discounted share more than 90 days after completion of services have violated this rule. Accordingly, USAC will seek recovery of \$3,877.89 in improperly disbursed funds from the applicant.

The USAC letter of Recovery of Improperly Disbursed Funds (RIDF) was received on December 17, 2021.² A Revised FCDL was received on June 21, 2022 to recover funds.³

Background

In the aforementioned RIDF, USAC contends that the applicant did not pay any of the non-discounted share of the products and services purchased. We strongly disagree as evidenced in attached invoices and proof of payments⁴. The applicant paid the non-discounted share in a timely manner every month as it was invoiced by the service provider, Conterra. The total amount that was due from the applicant from July 2019 to February 2020 was \$333,986. The attached proof of payments that NETXV paid during this same time period was \$351,788. This clearly shows that NETXV paid Conterra its non-discounted share.

During the Program Integrity Assurance process the discount percentage was reduced from 77% to 75%, causing the applicant to owe more for each previous invoice. The Funding Commitment Decision Letter was not issued until September 26, 2019⁵ and the correction was made in the invoice from Conterra in February 2020⁶. An educational service agency cannot pay more than the amount invoiced (per audit/accounting rules); therefore, as soon as the invoice corrections were made by Conterra in February 2020, the applicant paid the difference of the non-discounted share. This is the "true-up" as described in the previous appeal to USAC⁷, which was denied on June 21, 2022.

Conclusion

² Recovery of Improperly Disbursed Funds Letter from USAC dated December 17, 2021

³ NETXV_2019_RFCDL_Appeal_Denied_6.21.2022

⁴ NETXV_2019_Conterra Invoices_BEN proof of payments to Conterra

⁵ NETXV_Funding Commitment Decision Letter_9.26.2019

⁶ NETXV_2019_Feb 2020_Work Detail Invoice

⁷ 2019_Appeal_NETXV_FY2019_BEN 221711_EPC record_#255304

NETXV paid the total of each monthly invoice received and the "true-up" amount for the months from July 2019 through February of 2020, as evidenced in the attached invoices and proof of payments. NETXV is respectfully requesting a favorable decision by the FCC for our appeal of USAC's decision to seek reimbursement of improperly disbursed funds from the applicant, based on the documentation provided, since all non-discounted payments were made to the service provider as invoiced. NETXV paid 100% of the non-discounted amount invoiced and should not be penalized for not paying for amounts not invoiced until February 2020. Furthermore, NETXV contends that paying USAC after already paying the service provider is an additional penalty to the applicant.

We further attest that there is no intention to defraud the system in any way by this appeal request.

Appeals of USAC decisions are due within 60 days. As such, this appeal is timely filed.

Respectfully,



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